

**UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF MAINE**

LYNN MERRILL, et al.,

Plaintiffs

v.

MATTHEW DUNLAP, et al.,

Defendants.

CIVIL ACTION NO. 1:20-cv-00248-JAW

JOINT STATUS REPORT

NOW COME Plaintiffs Lynn Merrill, Nicholas Giudice, Pauline Lamontagne and Cheryl Peabody, together with the Defendants, Matthew Dunlap, Secretary of State, in his official capacity and the Maine Department of the Secretary of State (collectively “the Secretary”), and the Cities of Augusta, Bangor, Portland, and the Town of Winslow, and in their official capacities Tracy Roy, Augusta City Clerk & Registrar of Voters, Lisa Goodwin, Bangor City Clerk & Registrar of Voters, Katherine Jones, Portland City Clerk & Registrar of Voters, Lisa Gilliam, Winslow Town Clerk & Registrar of Voters (collectively, the “municipal defendants”), to report on the status of this matter to the Court as follows:

1. On August 14, 2020, the parties proposed to stay the deadlines to allow the Secretary of State to promptly begin implementing its plan to develop a system that can provide universally accessible pdf (“UA/PDF”) ballots for all municipalities in the State of Maine. *See* ECF 20. The parties further proposed, and the Court ordered, a telephone conference for September 14, 2020. *See* ECF 20, 24.

2. On September 8, 2020, counsel for the Plaintiffs filed a Motion for Conference of Counsel to move the date for Conference of Counsel prior to September 14, 2020 due to counsel

for the Plaintiffs' concerns that the system was not yet operable and a hearing date may be necessary. See ECF 28. The Court granted the Motion and set a new date for conference with the Court on September 9, 2020. See ECF 33.

3. On September 9, 2020, counsel for Plaintiffs expressed concern that the system was not yet operable and utilizing UA/PDF ballots was proving difficult to implement due to varying screen readers, operating systems and technological experience of visually impaired and blind testers. The results of the testers were mixed. Counsel for Plaintiffs urged that other systems were more easily usable, such as those provided by ballot marking companies. Counsel for Plaintiff requested a hearing date be set in the event that the UA/PDF ballot system did not improve for testers.

4. Counsel for the Secretary responded that the Secretary was in the midst of implementing a universally accessible absentee voting system, that testing was ongoing, that the Secretary's vendor and the Secretary of State's Office were addressing the problems and responding to testers, and that improvements were being made. Counsel for the Secretary believed that the system would be fully operational by October 2, 2020. The Court set a Continued Conference of Counsel for September 22, 2020 for the parties to report their progress, and an evidentiary hearing on Plaintiff's Motion for Preliminary Injunction for October 5, 2020 at 10 a.m., if necessary. See ECF 33, 34.

5. Counsel for Plaintiffs and counsel for the Secretary conferred on September 17 and 21, 2020. Counsel for the Secretary conveyed that their interim plan for providing accessible absentee UA/PDF ballots for the upcoming general election on November 3, 2020 is on track and includes the following elements:

a. **New Accessible Absentee Ballot Request Service:** A new application will be added to the state's existing Absentee Ballot Request (ABR) Service that will enable civilian voters who self-certify that they have a disability to complete an online request for an accessible absentee ballot and receive the accessible ballot from the Secretary's Elections Division.¹ The application is accessible by standard screen reader software,² and enables a voter who is blind or visually impaired to navigate the application and complete the form fields. The Secretary is designing a welcome page on the SOS website for the accessible ABR Service. The welcome page for accessible absentee ballot users will contain tips for each screen reader, which will walk through each step of accessing the ballot. The welcome page will also contain a sample absentee ballot so people can practice prior to voting with the real ballot using their own operating system. Voters will be provided with confirmation (in an accessible form) that their request is completed after they submit it. Once the application is approved, the voter will receive a secure log in and credentials to access the state ballot³ for the electoral districts in which they reside, as well as any local ballots submitted as described in paragraph e below.

b. **Publicizing the Secretary's New Accessible ABR Service:** The Secretary's web site will contain information directing voters to the ABR service and towns can do the same on their websites. The Secretary has provided notice to approximately 500 municipalities that accessible absentee voting is being offered for voters with print disabilities, and has provided

¹ Municipal clerks will be advised by the SOS that if a voter contacts them (by phone, email or otherwise) to ask for an accessible absentee ballot, the clerk must direct the voter to the ABR service because using that service will be the only effective way to submit a request for an accessible absentee ballot. The Secretary's web site will contain information directing voters to the ABR service as well, and towns can do the same on their web sites.

² The Secretary's vendor has successfully tested the new application for the ABR service to ensure its effective usability by blind and visually impaired voters using the screen readers JAWS, VoiceOver, and NVDA.

³ The state ballot contains all the federal, state and county offices, and any statewide citizen initiative or people's veto petition that may qualify for the ballot.

instructions to the municipalities for submitting the content of their local ballots in proper format and on time to the Secretary.

c. **Tracking of Absentee Ballot Requests and Ballots:** The Secretary is creating a tracking system for all voters. This system will confirm the status of each request for an absentee ballot, and that the ballot was received and accepted by the State, so the voter will know that their vote has been received. This tracker will be on the Secretary's web site and will meet the same standards of accessibility as the rest of the web site.

d. **Development of New Universally Accessible PDF (UA/PDF) Ballots:** The Secretary's existing vendor of the balloting system for Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) voters, IVS, LLC, has reprogrammed that system to generate a universally accessible pdf (UA/PDF) absentee ballot that blind and visually impaired voters will be able to download and review using a standard screen reader (JAWS, NVDA, or VoiceOver). Voters will be able to mark their choices independently and confidentially, and then submit the ballot via a secure delivery system using the secure log in credential provided through the ABR service referenced in paragraph a above.

e. **Municipal Ballots:** The systems described above will accommodate municipal ballots as well as state ballots. Municipalities holding local elections in conjunction with the upcoming statewide general election are responsible for submitting the content of their ballots in proper format and on time, in accordance with instructions the Secretary has sent them. Out of the approximately 79 municipalities that the Secretary believes will have local ballots in the November 2020 election, approximately 60 have submitted their local ballot information. The Secretary's vendor has hired extra staff to work on the local ballots to make them universally accessible, and the Secretary has assigned a staff person to serve as liaison with the towns to provide technical

assistance in getting their ballot information to the vendor. Both the state and local ballots cast by voters using the accessible ballot system for this election will be submitted to the Secretary, but will be separated upon receipt and forwarded to the appropriate municipality for counting since the Secretary does not count ballots for municipal elections. The system includes a privacy shield to protect the privacy of the local ballot in the handling process.

f. **Testing of the UA/PDF Ballots:** The Secretary and its vendor IVS, LLC, have undertaken their own testing of the UA/PDF ballot. In addition, IVS invited Plaintiffs, Plaintiffs' expert, others who are visually impaired or blind, and advocacy groups to participate in testing of the new ballot before full implementation. Plaintiffs provided names and contact information of testers to the Secretary on August 21, 2020, and external testing for the UA/PDF ballots began on August 31, 2020. Testers tested multiple versions of the new ballot and provided feedback to the Secretary and IVS. The Secretary and IVS made changes to the ballot and ballot instructions in response to feedback from the testers.

g. **Troubleshooting Assistance:** Voting by accessible absentee ballot is a new tool for Maine voters this year, and the usability of the new UA/PDF ballot system proved challenging for some testers. Due to many combinations of screen readers, operating systems and browsers, and the varying technological experience level of testers, assistance from the vendor was often necessary for testers to troubleshoot and cast a test ballot. The Secretary and IVS LLC have endeavored to address every issue that the testers reported, but in order to help voters use the UA/PDF ballot successfully, the Secretary is providing a sample absentee ballot and step by step directions on the Secretary's welcome page as described in paragraph (a). In addition, the Secretary's vendor has hired an expert in accessibility, Maria Delgado, formerly of American Printing House for the Blind, to troubleshoot any problems that occur when print-disabled voters

are attempting to cast an absentee ballot. Ms. Delgado will work with each voter through the system if any problems should occur. Information on how to contact Ms. Delgado will be on the accessible ballot web page. Ms. Delgado will also keep track of the feedback she receives for the purpose of assessing the usability and effectiveness of the system.

h. **System Launch Date:** People with print disabilities will be able to submit their ballot requests via the online ABR service and obtain their ballots to cast starting on October 2, 2020, which is the same date that other voters will begin to receive their paper absentee ballots.

6. At this time, the parties wish for the Secretary to continue implementing its plan to make accessible absentee ballots available for voters with print disabilities. Therefore, the parties respectfully request that the Court issue a further stay of deadlines in this case until a date to be discussed at today's conference, and ask that the Court schedule a status conference on that day. The parties will file a joint status report prior to the conference. The parties also request that the hearing date set for October 5, 2020 on Plaintiffs' Motion for Preliminary Injunction be cancelled.

Dated: September 22, 2020

For Plaintiffs:

/s/ Kristin L. Aiello
Kristin L. Aiello
Attorney for Plaintiffs
DISABILITY RIGHTS MAINE
160 Capitol Street, Suite 4
Augusta, Maine 04330
(207) 626-2774
kaiello@drme.org

/s/ Peter M. Rice
Peter M. Rice
Attorney for Plaintiffs
DISABILITY RIGHTS MAINE
160 Capitol Street, Suite 4
Augusta, Maine 04330
(207) 626-2774
pmrice@drme.org

/s/ Eve Hill
Eve Hill
Attorney for Plaintiffs
BROWN GOLDSTEIN LEVY
120 E. Baltimore Street, Suite 1700
Baltimore, MD 21202
410.962.1030 x1311
ehill@browngold.com

Respectfully submitted,

For Defendant Secretary of State and
Department of the Secretary of State:

/s/ Phyllis Gardiner
Phyllis Gardiner
Assistant Attorney General

/s/ Valerie A. Wright
Valerie A. Wright
Assistant Attorney General
6 State House Station
Augusta, Maine 04333-006
(207) 626-8830
phyllis.gardiner@maine.gov
valerie.a.wright@maine.gov

For the Municipal Defendants:

/s/ Stephen E.F. Langsdorf
Stephen E. F. Langsdorf
/s/ Laura Rideout
Laura Rideout
Attorneys for the City of Augusta
and Tracy Roy
PRETI FLAHERTY
P.O. Box 1058
45 Memorial Circle
Augusta, ME 04332-1058
207-623-5300
slangsdorf@preti.com

Paul S. Nicklas
City Solicitor
For the City of Bangor and
Lisa Goodwin
73 Harlow Street

Bangor, Maine 04401
(207) 992-4275
paul.nicklas@bangormaine.gov

/s/ Danielle P. West-Chuhta
Danielle P. West-Chuhta
Corporation Counsel
For the City of Portland and
Katherine Jones
Portland, Maine 04101
(207) 874.8480
dwchuhta@portlandmaine.gov

William A. Lee, III
Attorney for the Town of Winslow and
Lisa Gilliam
O'DONNELL LEE, P.A.
P.O. Box 559
Waterville, ME 04903-0559
207-872-0112
walee@watervillelaw.com

CERTIFICATE OF SERVICE

I hereby certify that on this date, I electronically filed the foregoing document entitled Joint Status Report via the Court's CM/ECF system, which will serve a copy of same upon all counsel of record.

DATED: September 22, 2020

/s/ Valerie A. Wright

Valerie A. Wright, ME Bar No. 9166

Attorney for Plaintiffs

DISABILITY RIGHTS MAINE

160 Capitol Street, Suite 4

Augusta, Maine 04330

(207) 626-2774

kaiello@drme.org